

**GUILTY PLEA — Rule 17.3 and Rule 26.2(d), factual basis for guilty plea**  
**Revised 11/2009**

Rule 17, Ariz. R. Crim. P., sets out the procedures the trial court must follow when accepting a defendant's guilty plea. Rule 17.3 states that the trial court may determine that there is a factual basis for the plea at the time the court accepts the plea, or the court may defer that finding "to the time for judgment of guilt as provided by Rule 26.2(d)." Rule 26.2(d), Ariz. R. Crim. P., states:

Factual Determination. In the event the trial court did not make an affirmative finding of a factual basis for the plea pursuant to Rule 17.3, before the entry of the judgment of guilt the trial court shall make such determination. One or more of the following sources may be considered: statements made by the defendant; police reports; certified transcripts of the proceedings before the grand jury; and other satisfactory information.

In *State v. Johnson*, 181 Ariz. 346, 349, 890 P.2d 641, 644 (App. 1995), the court of appeals stated, "A factual basis is required for the purpose of shielding the innocent from conviction, rather than to provide a back-door for defendants to obviate finality by challenging their guilty pleas." A factual basis for a guilty plea does not require a finding of guilt beyond a reasonable doubt; rather, a factual basis can be established by "strong evidence" of guilt. *State v. Salinas*, 181 Ariz. 104, 106, 887 P.2d 985, 987 (1994); *State v. Wallace*, 151 Ariz. 362, 365, 728 P.2d 232, 235 (1986).

A judge is not limited to the defendant's statement at the change of plea hearing in determining whether a factual basis exists, but may consider other sources of information in the record. *State v. Freda*, 121 Ariz. 430, 432, 590 P.2d 1376, 1378 (1979). This is true even if the defendant's statements at the change

of plea hearing are ambiguous, *Salinas*, 181 Ariz. at 106, 887 P.2d at 987, and even if the defendant flatly denies an element of the crime. *Freda*, 121 Ariz. at 432, 590 P.2d at 1378. The evidence of guilt may be derived from any part of the record, including presentence reports, preliminary hearing transcripts, admissions of the defendant, statements by prosecutors, and police reports. *Salinas*, 181 Ariz. at 106, 887 P.2d at 987; *State v. Rogowski*, 130 Ariz. 99, 101, 634 P.2d 387, 389 (1981); *Johnson*, 181 Ariz. at 349, 890 P.2d at 644. The court may also consider a codefendant's statements. *Johnson*, 181 Ariz. at 349, 890 P.2d at 644.